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HAND DELIVERY

Cynthia L. Johnson
Director, Cash Management Policy
and Planning Division
Financial Management Service
U. S. Department of the Treasury
Room 420
401 - 14th Street, S. W.
Washington, D.C. 20227

Re: **Notice of Proposed Rulemaking re Conversion of
Federal Payments From Checks to Electronic Funds
Transfer, Phase Two (RIN 1510-AA56)**

Dear Ms. Johnson:

On behalf of a subcommittee of the Non-Bank Funds Transmitters Group, composed of Travelers Express Company, Inc.; Western Union Financial Services, Inc.; American Express Travel Related Services Company, Inc.; MoneyGram Payment Systems, Inc.; Thomas Cook Inc.; and Comdata Network, Inc.,¹ the leading national providers of non-bank funds transmissions services, the following comments are submitted in response to the notice of proposed rulemaking published on September 16, 1997 at 62 Fed. Reg. 48714, *et seq.*, concerning the proposed regulations implementing the statutory requirement that all federal payments made after January 1, 1999 (other than payments under the Internal Revenue Code) must be made by electronic funds transfer ("EFT").

To implement the provisions of the Debt Collection Improvement Act of 1936, 31 U.S.C. §3332, ("the Act"), the above-referenced rulemaking is an attempt

¹ Some of these companies have participated in the public hearings related to implementation of the EFT requirement and will also file individual comments with regard to this notice of proposed rulemaking.

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to provide a system for the electronic delivery of federal payments to recipients who do not maintain a bank account. Consistent with this ambitious effort is the Treasury Department's stated objective in implementing the Act:

[T]o assure that we maximize private sector competition for the business of handling federal payments, so that the recipients not only have a *broad range of choice* of payment services and service providers, but also that they receive their payments at reasonable cost, with substantial consumer protections, and with the *greatest possible convenience*, efficiency and security.

(Testimony of John D. Hawke before the Senate Committee on Banking, Housing and Urban Affairs, May 11, 1997) (emphasis added. Far from maximizing competition for the business of handling federal payments, however, the proposed rule excludes the very non-bank money transmitters who have historically served the unbanked community, and limits the entities eligible to provide federal benefits payments to banks and other entities. To effectuate the statutory mandate, as well as Treasury's stated objectives, licensed, regulated non-bank financial institutions, such as money transmitters, should be included as authorized payment agents. Further, in any case, Treasury should do nothing to preclude the ability of financial institutions to partner with licensed money transmitters to provide recipients with alternative means to access their funds should they choose to utilize such service.

Licensed Money Transmitters Should Be Permitted to Serve as Authorized Payment Agents.

The Act required recipients of federal payments to "designate 1 or more financial institutions *or other authorized agents* to which such payments shall be made." 31 U.S.C. §3332(g)(1)(1997) (emphasis added). "Authorized agent" is not defined in the statute, but clearly expands the universe of eligible entities beyond financial institutions, as acknowledged by Treasury in the preamble to the proposed rules. (See 62 Fed. Reg. 48716.) Coupled with the broad discretion afforded the Secretary in promulgating regulations under the Act, there is *nothing* to prevent the Department from authorizing duly licensed money transmitters from continuing to serve unbanked individuals in the electronic receipt of federal benefits payments. Indeed, Treasury recognized that it is "possible operationally to deliver a payment by EFT to an account in the name of an authorized payment agent held by a financial institution." (See 62 Fed. Reg.

48716.) Nevertheless, the Department expressed "concern" regarding the potential failure of agents to honor obligations and the lack of regulation of non-bank money transmitters. As a result, rather than expanding the options available to recipients of federal payments -- and, concomitantly, the competition for provision of this service -- the Department narrowly defined "authorized payment agent," limiting the terms strictly to recipients who are incapacitated and unable to manage their own payments. This excessively narrow definition defeats the purpose of the statute and directly contravenes Treasury's stated objectives. Moreover, the Department's concern regarding the safety and soundness of non-bank money transmitters is unfounded.

First, eligible non-bank participants in the provision of EFT could be limited to entities duly licensed and regulated under state money transmitter laws. Forty-three states currently regulate and license the business of check selling and funds transmission, principally to ensure the safety and soundness of such institutions. As administered by state banking departments, the licensing process in most states requires, for example, that an applicant submit detailed information concerning its operations, management, financial status, etc. Moreover, to obtain a license, an applicant must illustrate that it will operate its business in a safe and sound manner, and that its license may be revoked should the state banking department determine at any time that the licensee is not in compliance. Most states also require money transmitters to post a bond to protect the public from insolvency or default, typically in the \$10,000 to \$1 million range. In addition to bonding requirements, virtually all states require transmitters to meet specified net worth requirements ranging from \$25,000 to \$3 million. Finally, there is a growing trend among states to require licensees to maintain investments in cash, certificates of deposit or bonds equal to the amount of instruments or transmissions outstanding. This "permissible investment" is, in effect, a 100% reserve requirement.

Given this comprehensive scheme of state licensing, any suggestion that these entities are "unregulated" is disingenuous. Moreover, Treasury could require, among other things, that revocation of a transmitters license by any state banking department constitutes grounds for revocation of that transmitter's rights to participate as a payment agent under the federal EFT program. In addition, Treasury could maintain an independent ability to monitor the program and revoke the right of a money transmitter to participate in the federal EFT program for cause.

Second, as set forth in the testimony of a number of non-bank financial providers at the public hearings, in order to serve as payment agents, these entities would hold omnibus accounts with depository institutions into which recipient's funds would be deposited. Participating recipients would then be able to access their funds at any of the retail locations of the non-bank money transmitter. Such an arrangement would thus be subject to federal consumer protection laws, including Regulation E. This would be similar to the proposed broker/dealer exemption contained in proposed §208.6(b) which permits federal payments to be deposited into an investment account maintained in the broker or dealer's name.

Licensed Money Transmitters Should Be Permitted to Partner with Financial Institutions in the Delivery of Federal Payments.

Even if the proposed rules are not revised to allow licensed money transmitters to serve as authorized payment agents, such entities should be permitted to continue to partner with financial institutions and market products and services to recipients. As Treasury expressly acknowledged in the preamble to the proposed rules, "non-financial institutions have performed such functions in the past and are developing new products and services that will allow them to serve recipients who receive their Federal payments by EFT." (62 Fed. Reg. 48723.) The use of such products and services would be "*purely voluntary*" on the part of recipients, as Treasury accurately recognized. (*Id.*)

Again, the goal of the EFT initiative is to broaden the range of options available to recipients and provide "the greatest possible convenience" to these individuals". (Testimony of Donald Hammond at the Electronic Funds Transfer 99 Public Hearing, October 14, 1997.) Indeed, it is the lack of convenient access to banks in many low income and minority neighborhoods that has contributed to the growth of the unbanked population in recent years. Non-bank funds transmitters have filled this void by offering low cost financial services through retail outlets accessible to individuals in virtually any neighborhood. The competition among the various providers of these services have kept prices low and forced these companies to continue to innovate to meet the varied needs of its customers.

A vast network of local neighborhood businesses such as convenience stores, supermarkets, pharmacies, travel agents, gas stations and other retail outlets sell money orders and other financial services as third-party vendors for non-bank money transmitters. This network affords customers convenient

locations, access and expanded hours of service. For example, Travelers Express Company, Inc., the nation's largest issuer of money orders, has over 42,000 locations nationwide; Western Union operates through a network of approximately 18,000 money transmission agents nationwide; and MoneyGram services are offered at approximately 13,500 domestic locations.

Additionally, certain non-bank money transmitters and their third-party vendors offer unique, individualized services such as providing staff conversant in foreign languages or the ability to transmit funds to accessible foreign locations that banks typically do not serve. Non-bank money transmitters offer flexibility by allowing customers to purchase only the minimum financial service required without requiring the purchase of services in any particular combination or dollar amount. Moreover, many bank customers use non-bank money transmitters for particular types of basic services. For example, for a family that needs a few checks each month to pay obligations such as rent, telephone bills, utilities and car payments, it is far more economical to purchase money orders than to maintain a checking account. In short, recipients of federal payments should not be deprived of the option to utilize these products and services on a voluntary basis.²

Treasury has specifically requested comment as to whether the additional access offered through arrangements with third parties should be included in the pricing proposal in the competitive bid process. Given the fact that the option to use the additional services provided by non-bank funds transmitters is entirely *voluntary*, there is *no* legitimate need to regulate the cost of such services. In fact, the market for the services provided by non-bank funds transmitters is extraordinarily competitive. The average cost of a money order offered by a major national issuer, for example, is 75 cents.

² This ability to partner with financial institutions applies to the "ETA" accounts established by Treasury for recipients who do not have bank accounts, as well as to recipients who have their own bank accounts. In either case, the use of additional services or locations provided by non-bank money transmitters is entirely voluntary on the part of the recipient. There is simply no reason to allow recipients with existing account relationships to have an array of options provided by non-bank financial institutions, but preclude those individuals with an ETA account from obtaining such needed services.

Recipients of Federal payments benefit from this retail price competition among non-bank money transmitters. Because profit margins are slim, and because the dollar amount of individual transactions is small (typically, for example, money orders are not sold in denominations exceeding \$300), banks are simply not competing for this type of retail business. Therefore, it is in the interest of recipients of Federal payments to have the latitude to utilize the wide array of services offered by money transmitters. Regulation and price controls on such products and services would stifle innovation and competition, and would only harm those recipients most in need of those services.

Conclusion

For all the above reasons, in order to effectuate the mandate of the Debt Collection Improvement Act, licensed money transmitters should be permitted to participate in the federal EFT program as authorized payment agents. Further, in any case, financial institutions should be permitted to partner with licensed money transmitters to provide recipients of federal payments with additional and more accessible means to access their funds, should they opt to utilize such service.

Respectfully Submitted


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